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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2096

THOMAS EDWIN KECK
3104 Persimmon Street
Antioch CA 94509

A C C U S A T I O N

Respiratory Care Practitioner License No. 19362

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about April 14, 1997, the Respiratory Care Board issued Respiratory Care Practitioner License Number 19362 to Thomas Edwin Keck (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.”

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).”

19 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
20 substantially related to the qualifications, functions, or duties of a respiratory care
21 practitioner.”

22 7. Section 3752 of the Code states:

23 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
24 made to a charge of any offense which substantially relates to the qualifications,
25 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
26 the meaning of this article. The board shall order the license suspended or revoked, or
27 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
28 conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
4 accusation, information, or indictment.”

5 8. California Code of Regulations, title 16, section 1399.370, states:

6 “For the purposes of denial, suspension, or revocation of a license, a crime or act
7 shall be considered to be substantially related to the qualifications, functions or duties of
8 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
9 perform the functions authorized by his or her license or in a manner inconsistent with the
10 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
11 those involving the following:

12 “(c) Conviction of a crime involving driving under the influence or reckless
13 driving while under the influence.”

14 COST RECOVERY

15 9. Section 3753.5, subdivision (a) of the Code states:

16 "In any order issued in resolution of a disciplinary proceeding before the board,
17 the board or the administrative law judge may direct any practitioner or applicant found to have
18 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
19 investigation and prosecution of the case."

20 10. Section 3753.7 of the Code states:

21 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
22 include attorney general or other prosecuting attorney fees, expert witness fees, and other
23 administrative, filing, and service fees."

24 11. Section 3753.1 of the Code states:

25 "(a) An administrative disciplinary decision imposing terms of probation may
26 include, among other things, a requirement that the licensee-probationer pay the monetary costs
27 associated with monitoring the probation. "
28

1 FIRST CAUSE FOR DISCIPLINE

2 (Convictions)

3 12. Respondent is subject to disciplinary action under sections 3750(d),
4 3750(g), 3752 and CCR 1399.370(a) and (c) in that he was convicted in 2006 of driving under
5 the influence with a blood alcohol level above .20%, and in 2002, he was convicted of public
6 intoxication. The circumstances are as follows:

7 2006 conviction

8 13. On or about December 30, 2005, Antioch Police Officer Miguel Mendoza
9 arrested respondent for violating Vehicle Code sections 23152(a), driving under the influence of
10 alcohol and/or drugs, section 23152(b), driving while having a blood alcohol level .08% or
11 greater, and section 16028(a), failing to provide proof of financial responsibility.

12 14. On or about June 29, 2006, a criminal complaint titled *People of the State*
13 *of California vs. Thomas Edwin Keck*, case no. 149700-7, was filed in Superior Court, Contra
14 Costa County. Count One charged respondent with a misdemeanor, violating Vehicle Code
15 sections 23152(a), driving under the influence of alcohol and/or drugs. A special allegation was
16 charged, pursuant to Vehicle Code section 23578, that at the time of the offense, respondent had
17 a blood alcohol content of .20% and more by weight. Count Two charged respondent with a
18 misdemeanor, violating Vehicle Code section 23152(b), driving while having a blood alcohol
19 level .08% or greater. This charge also carried a special allegation pursuant to Vehicle Code
20 section 23578.

21 15. On October 26, 2006, respondent entered a plea of guilty to Count One
22 and admitted the enhancement (special allegation.) Count Two was dismissed. Respondent was
23 convicted and court probation was granted for three years. He was ordered imprisoned for two
24 days, ordered to pay fines and to attend and complete a Level Three nine month First Offender
25 Drinking Driver's Program. He was released on his own recognizance.

26 16. On December 12, 2006, a Notice of Non-Compliance was received,
27 indicating respondent failed to comply with the court's order. It was recommended that his
28 probation be revoked and a hearing was scheduled for December 20, 2006. Respondent failed to

1 appear, and a no bail warrant was issued which is currently outstanding.

2 2002 conviction

3 17. On September 29, 2001, respondent was arrested for violating Penal Code
4 section 647(f), public intoxication. On October 22, 2001, a criminal complaint titled *People of*
5 *the State of California vs. Thomas Edwin Keck*, case no. 128883-6, was filed in Superior Court,
6 Contra Costa County. Count One charged respondent with a misdemeanor, violating Penal Code
7 section 647(f). On January 14, 2002, upon his plea of guilty, respondent was convicted of this
8 offense.

9 18. Therefore, respondent's license is subject to discipline based on his two
10 convictions, which are substantially related to the practice of respiratory care.

11 SECOND CAUSE FOR DISCIPLINE

12 (Dishonest Act)

13 19. Respondent is subject to disciplinary action under section 3750(j)
14 [dishonest act] in that he did not admit that he was convicted on his license renewal application.
15 The circumstances are as follows:

16 20. Respondent completed a License Renewal Application. The application
17 states: CONVICTIONS: Since you last renewed your license, have you been convicted of,
18 diverted for, or pled guilty or nolo contendere/no contest to any violation of any law of any state,
19 the United States or a foreign country? You must disclose all misdemeanors and felonies
20 (including but not limited to Civil, Welfare, Health and Safety, Vehicle, or Penal Code
21 convictions/diversions) and any conviction which has been dismissed under section 1203.4 of the
22 Penal Code, or any similar provision of the law in another state, the United States or a foreign
23 country. Respondent checked the box next to "No" and signed the application under penalty of
24 perjury and dated it April 27, 2002.

25 21. At the time respondent completed his license renewal application, he was
26 aware that he was convicted on January 14, 2002, of a violation of Penal Code section 647(f),
27 public intoxication.

1 22. Therefore, respondent's license is subject to discipline based on his failure
2 to reveal the January 2002 conviction at the time he renewed his license in April 2002.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

6 1. Revoking or suspending Respiratory Care Practitioner License Number
7 19362, issued to Thomas Edwin Keck.

8 2. Ordering Thomas Edwin Keck to pay the Respiratory Care Board the costs
9 of the investigation and enforcement of this case, and if placed on probation, the costs of
10 probation monitoring;

11 3. Taking such other and further action as deemed necessary and proper.

12
13 DATED: August 16, 2007

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16 Original signed by Liane Zimmerman for:
17 STEPHANIE NUNEZ
18 Executive Officer
19 Respiratory Care Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant
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